

Commission on Safety and Health and Workers' Compensation

MINUTES OF MEETING

Thursday, October 5, 2000

Sacramento, California

In Attendance

Chair Tom Rankin

Commissioners Jill A. Dulich, Gerald O'Hara, Leonard C. McLeod, Kristen

Schwenkmeyer, Robert B. Steinberg, Darrel "Shorty" Thacker, John C. Wilson

Executive Officer Christine Baker

Call to Order/Adoption of Minutes

Chairperson Tom Rankin called the meeting to order at 10:10 am and asked for a motion on the draft minutes of the June 29, 2000 CHSWC meeting in Sacramento. Commissioner Wilson moved that the minutes be approved, Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Status Report on CHSWC Study of Permanent Disability by Rand

Update on Economic Conditions, Employer RTW Survey and Public Self-Insureds

Robert T. Reville, Ph.D., Director of Research, Institute of Civil Justice, Rand

Economic Conditions Study

Rand Institute developed a model that would allow for prediction of the impact of economic conditions on losses of injured workers. Dr. Reville reported that the study is now in draft form and is being circulated to other researchers for comment. Rand is waiting for additional data that would allow them to look at earnings losses of injured workers through 1998. Dr. Reville will present the results of this study at the next Commission meeting on December 14, 2000 in San Francisco.

Return to Work Study

Mr. Reville reported that telephone interviews of self-insured employers were finished. About 32 self-insured employers responded giving details on their return to work practices. Rand will be contacting the non-respondents again with a shorter survey in order to obtain a higher response rate. Rand requested to combine the Return to Work Study with UC Berkeley and Vocational Rehabilitation Study because there is significant overlap between the two studies. Dr. Reville stated that the combination of the two studies would be a stronger product. This study is expected to be completed early next year.

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Public Self-Insured Study

Dr. Reville reported that Rand is continuing the data analysis for this study. He stated that the analysis is complicated because there are differences across public agencies in the way they report salary continuances. Rand is trying to resolve the double counting in estimates of replacement rates which results from a particular employer providing them with data that is also being reported to EDD. There are also some findings of a higher rate of multiple injuries for the same workers that lead to some differences in calculations of replacement rates from private self-insured study. RAND expects to present the draft results for this study at the December Commission meeting.

Update on the "Other States" Study of Permanent Disability

Leslie I. Boden, Ph.D., Boston University School of Public Health

Dr. Boden reported on the preliminary results of "Comparing Workers' Compensation in Six States." The study is funded by the Commission on Health and Safety and Workers' Compensation, National Institute on Safety and Health and the State of New Mexico. Bob Reville of the Rand Institute and Jeff Biddle of Michigan State University are the co-investigators on the project.

The main purpose of this study is to examine earnings losses from workplace injuries, benefit adequacy and equity of benefits, to analyze how disability ratings work to match up lost earnings and benefits and to look at the return to work policies. The study will compare outcomes in six states: California, Washington, Wisconsin, Florida, Oregon, and New Mexico.

The preliminary results of the study among others indicate that California has higher wage losses and lower replacement rates than Wisconsin or Washington. Also, higher income workers in California and Washington have lower replacement of losses and higher rated cases have much higher replacement rates. A report of the study is expected in late spring 2001.

After the presentation, there were several questions from the Commissioners on the report. Commissioner Dulich asked for a clarification on how fringe benefits (i.e., retirement benefits, health benefits) are taken into account in the calculations. Dr. Boden responded that fringe benefits are not included in the calculation of replacement rates, but if they were, replacement rates would be even lower. Replacement rates are calculated on the basis of cash earnings only.

Commissioner Rankin asked if there is any way to determine how much of the high average losses in California are due to the relatively low temporary disability benefits in California compared to other states and how much is due to permanent disability. Dr. Boden responded that the project investigators could look into that issue.

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Workers' Compensation: Research Findings and the Public Policy Debate

Leslie I. Boden, Ph.D., Boston University School of Public Health

Dr. Boden reported that findings from advanced research do not support the contention of rampant fraud in workers' compensation. Research indicates substantial economic and non-economic impacts of workplace injuries that are inconsistent with widespread fraud, but does not rule out low-levels of fraud. Research also indicates that many eligible workers don't file for workers' compensation, workers compensation benefits are less than lost earnings, costs of non-market injuries are high and fraud is minimal.

Dr. Boden pointed out that California spends an average of \$28.5 million per year for fraud investigations, but very few cases of fraud are reported. In 1998 for example fraud arrests of workers constituted only about 0.1% of lost-time claims. He also stated that insurer/employer nonpayment of benefits is at least as problematic since the average underpayment is more than \$1,000 per claim. The total value of worker fraud in Texas between 1993 and 1996 was less than half the value of health care provider fraud and about one quarter of the value of premium fraud. The policy conclusions which Dr. Boden drew from his research are that the workers compensation system should assume that workers would like to go back to work and provide better support during recovery as well as more adequate benefits. He also concluded that workers compensation fraud by workers is overemphasized in many states at this time.

Commissioner Steinberg asked if Dr. Boden is planning to do any more analysis on the fraud issue. Dr. Boden responded that he doesn't have any such plans in the near future.

Additional Comment regarding the Anti-Fraud Campaign April 2000 Report Follow-Up

Thomas J. McBirnie, CHSWC Consultant

Mr. McBirnie presented updated information to the Commission to follow up on the anti-fraud report of April 2000. He reported that the California Workers' Compensation Institute (CWCI) has come out with 1999 figures of fraud referrals, arrests and convictions. In general, the number of referrals was up and arrests and convictions were down.

Mr. McBirnie and Ms. Baker met with the Anti-Fraud Committee of CWCI to obtain feedback on the Commission's anti-fraud report and received several comments. Ms. Baker and Mr. McBirnie asked if the Committee was satisfied with the results of progress and convictions considering that approximately \$28.5 million are spent per year to combat fraud.

The CWCI committee responded that that anti-fraud process is difficult, time-consuming and expensive. The Committee pointed out areas that if there is too much emphasis on how much money is being spent, prosecutors will concentrate on the easy cases (injured workers) and it will be harder for them to put resources into going after medical providers and employer fraud. Among other comments, the Committee stated that insurance companies are weary of making an

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accusation of employer fraud because they fear a bad faith suit from the employer if the case does not go through. The Committee also pointed out that the treating physician presumption of has created a problem, as far as medical-provider fraud. If unnecessary treatments or billing for treatments that is not been provided, if the numbers are small on a case-by-case basis, it may not lead to prosecution. They also thought that there should be a specific requirement that employers report injuries to the carrier within a specified number of days. Finally, they found that the Commission should have roundtable where various constituencies are brought together to focus and discuss a broad fraud program.

After some discussion, Commissioner Steinberg suggested that the Commission should decide on where it stands on workers' compensation fraud and make some recommendations on what kinds of fraud should be pursued.

CHSWC Vote

Commissioner Steinberg moved that Ms. Baker convene a roundtable on fraud and then come back and report to the Commission on the findings. Commissioner Wilson seconded and the motion passed unanimously.

Report on the Division of Workers' Compensation

Richard P. Gannon, DWC Administrative Director

Mr. Gannon reported on the status of several DWC projects. With regard to the Workers' Compensation Information System (WCIS) project, he reported that legislation was approved last session allowing the DWC to open the standard under which various reporting entities would be sending their data to DWC. The DWC was supposed to start mandatory reporting as of March 1, 2000. However due to Y2K programming concerns, many entities could not start the reporting and about two-thirds of them were issued variances to allow for some delay. The variances are due to expire in December of this year. There have been educational seminars and training sessions for providers and other attendees. Some of the planned data releases from WCIS will be standard reports and custom reports in response to policymakers.

Mr. Gannon also reported that the inpatient hospital fee schedule is up for revision. Mr. Gannon stated that the current inpatient hospital fee schedule has problems in that it does not provide for reimbursement of expensive surgeries and costly surgical implants that could significantly improve patients' recovery from a back injury. Recently, the DWC has gone through a public hearing process on how to revise the schedule and deal with problem. Currently, the DWC has proposed to take out of the fee schedule those surgeries which exceed the fee schedule's allowed amount by five times, so they will be taken out of the fee schedule, treated as an unusual case and paid at a separate rate. DWC has proposed to treat the durable medical equipment similarly.

Chairman Rankin asked if the operation would end up exceeding the fee schedule by five times, how could it be determined if those bills were justified. Mr. Gannon remarked that there has so

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far been no study done to analyze how other states are fixing a "reasonable" price and that he would like to be able to do such a study. He pointed out that the problem of trying to establish a reasonable price occurs where there is no provider contract and a procedure is taken out of the fee schedule.

Mr. Gannon also reported on DWC's audit system and the Vocational Rehabilitation Unit. With regard to the Audit unit, Mr. Gannon stated that the DWC is following up on the Commission's report of the DWC Audit system and is in the process of drafting regulations closely following Commission's recommendations in the study. Prior to coming out with the actual recommendations, DWC will hold an advisory committee meeting, but the regulations will generally focus on targeting audits to select the worst performers, using auditors to spend more of their time on key violations and auditing all locations within five years.

With regard to Vocational Rehabilitation, Mr. Gannon reported that there has been an increase in the number of injured workers returning to modified and alternate work over the last three years. For 1999, the DWC Rehabilitation unit reviewed and approved 8,866 plans for mainly underrepresented workers and 88 percent had successful return to work at the time of closure. He also reported that there has been an increase in the number of injured workers returning to modified and alternate work over the last three years.

Mr. Gannon continued the presentation with a report on another Commission project that DWC is implementing – the uninsured employer matching project which involves identifying illegally uninsured employers and bringing them into compliance. These activities involve data matching and coordination between DIR, WCIRB and EDD.

Lastly, Mr. Gannon related the financial problems that DWC is experiencing. He reported that DWC began the current fiscal year with a deficit of over \$1 million and, because of that, DWC's ability to hire new people had been suspended. He said that Presiding Judge Susan Hamilton of San Francisco and Presiding Judge George Mason of Walnut Creek have identified areas in which DWC is able to save expenditures. As a result, DWC was able to get the authority to fill 19 critical vacancies and set up a monitoring system to monitor expenditures. DWC currently has a position vacancy rate of approximately just less than 10 percent.

Final Draft Report on Loss Control Study

Frank Neuhauser, Survey Research Center, UC Berkeley

Marie Wardell, Survey Research Center, UC Berkeley

Mr. Neuhauser reported on the work that the Commission is doing with the IAIABC in the area of loss control. First a survey was conducted of what states are doing in the area of loss control in different practices to improve safety and health. In addition, the Commission is looking at how effective CalOSHA and the Loss Control unit are at improving safety and health within California. Mr. Neuhauser's presentation focused on the first of these.

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Mr. Neuhauser and Ms. Wardell elaborated on the various approaches that states take to focus loss control services on the most hazardous industry and the most hazardous employers. Mr. Neuhauser also stated that loss-control regulation outside California is very limited and the work done in California in the loss control area can be very important to other states.

At the next meeting Mr. Neuhauser and Ms. Wardell will be reporting on the evaluation of the effectiveness of OSHA's targeted high-hazard program.

Update on CHSWC Study of DWC Judicial Function

Thomas J. McBirnie, CHSWC Consultant

Mr. McBirnie reported on the status of the judicial study. He stated that the RAND Institute for Civil Justice was selected to perform the study on behalf of the Commission. The principal investigators for the study would be Deborah Hensler and Bob Reville and the project manager would be Nick Pace from RAND. As a first step, RAND will be putting together an integrated database of information from the DWC database, the Disability Evaluation Unit and the WCIRB database to try to figure what are the factors that make our system work differently. A resource group is also being put together that RAND will be able to contact if they wanted background on specific issues for the study.

Feasibility Study -- Payroll as a Basis of Premium Calculation

Christine Baker, Executive Officer, CHSWC

Ms. Baker reported that Commission staff, in response to Chairman Rankin's request, developed a draft issue paper. The issue paper deals with alternative factors that may be utilized in workers' compensation premium calculations. Specifically, the paper looked at payroll, the number of hours worked, dual classifications and other premium adjustment programs and noted the advantages and disadvantages of each of these alternatives as a basis of premium.

Ms. Baker asked if the Commission wished to enter into a joint feasibility study with the WCIRB to identify additional classifications in the construction industry that might benefit from a dual-classifications rating system and identify the greatest gain and the pros and cons of expanding this kind of program to other classifications and industries.

CHSWC Vote

Commissioner Steinberg moved that CHSWC approve the joint feasibility study with WCIRB. Commissioner Wilson seconded and the motion passed unanimously.

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Proposal to Look at the Responsibility that Public Schools have for Workers' Compensation Coverage

Christine Baker, Executive Officer, CHSWC

Ms. Baker reported that pursuant to Labor Code Section 3368, the public school district is considered the employer for the purposes of workers' compensation coverage for participants in vocational training programs. Such participants include industrially injured workers who are referred under their workers' compensation vocational rehabilitation benefits for vocational training.

Ms. Baker asked if the Commission wished to consider developing an issue paper regarding the responsibility for workers' compensation coverage for participants in public school vocational programs. The issue paper would address legislative and/or administrative alternatives and explore the intent of the original proposal.

CHSWC Vote

Commissioner Wilson moved to approve developing an issue paper regarding the responsibility for workers' compensation coverage for participants in public school vocational programs. Commissioner Thacker and Commissioner Schwenkmeyer seconded the motion, which passed unanimously.

Report on Background Paper regarding Insurance Insolvency

Thomas J. McBirnie, CHSWC Consultant

Ms. Baker reported that the background paper was being prepared in response to Commissioner Wilson's request for information regarding insurance insolvency and its impact on benefit payments for injured workers with the focus on the liquidation of the Superior National Insurance company.

Mr. McBirnie reported on the liquidation of Superior National Insurance Company. He stated that other insurance companies are also being downgraded and related the possible causes of the problem. Among the causes was the under reserving of claims that occurred after the elimination of the minimum rate law. Mr. McBirnie pointed out that another problem exists with CIGA (California Insurance Guarantee Association) which is paying claims against Superior National since liquidation. It is possible that CIGA's liabilities with respect to Superior National companies and other carriers that are having problems would exceed the immediate assets of CIGA.

Commissioner Rankin suggested that Mr. McBirnie draft proposed legislation which would give CIGA (California Insurance Guarantee Association) permission to advance funds.

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Public Comments

Vancois D'Amoun

Mr. D'Amoun, an injured worker, expressed his concern about insurance carrier fraud. He stated that he would like to see fast implementation of an agency to police insurance carrier fraud.

Dennis Cunnane

Mr. Cunnane, an attorney with Farmers Insurance, suggested that the Roundtable on Fraud which will be organized by the Commission would address the issue of penalty for fraud against an injured worker. He stated that currently there is no penalty in the workers' compensation system laws for the injured workers who commit fraud.

Adjournment

Commissioner Dulich moved to adjourn the meeting and Commissioner McLeod seconded the motion. Chairperson Rankin adjourned the meeting at 1:30 pm.

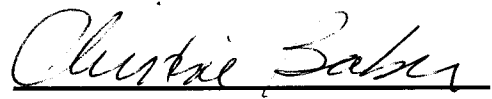
Approved:

Respectfully submitted,

 12-14-00

Tom Rankin, Chair

Date



Christine Baker, Executive Officer